

9 FAM APPENDIX N, 200 VISA PETITIONS

(CT:VISA-892; 06-06-2007)

(Office of Origin: CA/VO/L/R)

9 FAM APPENDIX N, 201 AUTHORIZATION TO APPROVE PETITIONS AT CERTAIN POSTS

(CT:VISA-892; 06-06-2007)

- a. Department of Homeland Security (DHS) has delegated authority to consular officers assigned to visa-issuing posts abroad (except at posts in countries where there is a U.S. Citizenship & Immigration Services (USCIS) overseas office to accept and adjudicate petitions) to approve petitions for a status accorded to certain relatives, under certain circumstances. The Bureau of Consular Affairs has agreed to continue restricted petition acceptance services for filing of Form I-130, Petition for Alien Relative, Form I-600, Petition to Classify Orphan as an Immediate Relative, and Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant petitions on a temporary basis until electronic filing services are available.
 - (1) Form I-130, Application for Immigrant Visa and Alien registration, is used to accord immediate relative status under INA 201(b) (8 U.S.C. 1151(b)), first, second, third, or fourth preference status under INA 203(a) (8 U.S.C. 1153(a)).
 - (2) Form I-600 is the petition for status for an orphan as an immediate relative under INA 101(b)(1)(F) (8 U.S.C. 1101(b)(1)(F)).
 - (3) Form I-360 is the Petition for Amerasian, Widow(er), or Special Immigrant, used to classify an alien as an immediate relative under Public Law 97-359 or under INA 201(b), or as a special immigrant under INA 203(b)(4) (8 U.S.C. 1153(b)(4)).
- b. You may exercise such authority with regard only to the approval of visa petitions, not to the denial thereof. You must ensure that the petition meets the appropriate requirements listed below before approving the petition. (See also 9 FAM 42.41 N4.)
- c. You must forward petitions which are not clearly approvable to the USCIS Officer-in-Charge at the USCIS office with jurisdiction over the post. (See USCIS Web site for the list of overseas offices and the countries in their jurisdictions), together with all supporting documents, for adjudication.

You may not approve a Form I-130, Petition for Alien Relative unless USCIS has reported, after conducting a background check ("Adam Walsh Act check"), that the petitioner is eligible to file a petition under INA 204(a)(1)(A)(viii) or 204(a)(1)(B)(i). Otherwise, the Form I-130 is not clearly approvable. To obtain the Adam Walsh Act check, send the petitioners' biodata to USCIS through national visa center (NVC) (See 9 FAM 42.41 N4 and 9 FAM 42.41 PN5).

9 FAM Appendix N, 201.1 Location of Petitioner and Beneficiary

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- a. Consular sections may accept Form I-130 from U.S. citizens who reside in their jurisdiction. U.S. citizens whose principal residence is not in the consular district, and/or who have entered the consular district as a temporary visitor/student/or with limited leave to enter and remain must file the petition with the appropriate USCIS Service Center in the United States. You may accept the Form I-360 from widows and widowers who are resident in the consular district if those applications meet all the existing requirements.

You must require appropriate evidence that the petitioner has permission to reside in the consular district or a copy of the petitioner's orders if he or she is a member of the U.S. military stationed in the country. The petitioner must have maintained continuous residency in the consular district for a minimum of the preceding six months in order to demonstrate principal residence.

In emergent or humanitarian cases as well as those in the national interest, you may use discretion in accepting a Form I-130, filed by a petitioner who does not reside in the consular district. These cases should be rare. You must use this discretionary authority on an individual case basis but may consider circumstances such as beneficiaries who are young children and have unexpectedly lost their caretaker to meet the "humanitarian" test. National interest cases would include U.S. military or U.S. Government employees facing transfer. The petitioner must, regardless of place of residence, present evidence of relationship to the beneficiary and his or her own status in the United States in support of the petition.

- b. If you receive a Form I-130 petition at a post that does not issue immigrant visas, you should suggest that the applicant apply at the post issuing immigrant visas for that area. If such a requirement places a hardship on the petitioner, you may accept the petition for processing. After confirming the family relationship, send the petition and all documentation received to the post processing immigrant visas for that

region. The immigrant visa issuing post will create the provisional case (see 9 FAM 42.41 PN5), send the petitioner biodata to NVC, and, after notification that the Adam Walsh Act check has been completed and the petitioner is eligible to file the Form I-130, complete the adjudication procedures for that petition.

9 FAM Appendix N, 201.2 Proof of U.S. Citizenship

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- a. Petitions filed by U.S. citizens must be accompanied by primary evidence of the petitioner's U.S. citizenship. The petitioner may meet this requirement for primary evidence of citizenship by providing:
 - (1) A birth certificate issued by a civil authority that establishes the petitioner's birth in the United States; or
 - (2) A certificate of U.S. naturalization or citizenship issued in the petitioner's name; or
 - (3) An unexpired passport issued for full validity to the petitioner as a citizen of the United States (not as a non-citizen national); or
 - (4) A Form FS-240, Report of Birth Abroad of a Citizen of the United States of America, relating to the petitioner.
- b. A petitioner who is unable to obtain primary evidence of citizenship may submit other forms of evidence; however, such a petition should be regarded as "not clearly approvable" and forwarded to the USCIS office with jurisdiction. (See 8 CFR 204.1(g)(2) for further information concerning documentation which USCIS accepts when evidence of U.S. citizenship is unavailable.) In every case, the consular officer must be satisfied with the bona fides of the document and that the bearer has not lost U.S. citizenship since the date of issuance.

9 FAM Appendix N, 201.3 Evidence of Lawful Permanent Resident (LPR) Alien Status

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An alien petitioner claiming to be a lawful permanent resident (LPR) of the United States may establish such status by submitting one of the following forms of primary evidence:

- (1) A passport bearing a DHS endorsement reflecting a lawful admission for permanent residence; or
- (2) Form I-551, Alien Registration Receipt Card.

In the absence of either of the above, such status may be verified from official DHS records.

NOTE: Form I-130 filed by LPRs may not be accepted except when acting on the petition is in the national interest or if an emergent or humanitarian situation exists. Seek concurrence from CA/VO/F/P before accepting any such petition.

9 FAM Appendix N, 201.4 Petition Submitted on Behalf of a Spouse

(CT:VISA-892; 06-06-2007)

A petition submitted on behalf of a spouse must be accompanied by:

- (1) A certificate of marriage between the petitioner and the beneficiary;
- (2) Proof of the legal termination of any previous marriage(s) of either party;
- (3) Completed and signed Form G-325, Biographic Information, for both the petitioner and the spouse; and
- (4) A passport-style color photo of the petitioner and a passport-style color photo of the spouse that were taken within 30 days of the date of application.

9 FAM Appendix N, 201.5 Petition Submitted by a Widow or Widower

(CT:VISA-892; 06-06-2007)

A petition for immediate relative status filed by a widow or widower of a United States citizen must, in addition to the usual evidence for a spousal petition, be accompanied by evidence of the U.S. citizenship and of the death (within the two preceding years) of the deceased marital partner. The widow or widower may file such a petition only if the marriage to the U.S. citizen had lasted at least two years and was still in effect at the time of the death. A child of the widow or widower may be included in the petition as a derivative beneficiary.

9 FAM Appendix N, 201.6 Petition on Behalf of a Child

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- a. A parent filing a petition on behalf of a child must present evidence of his or her own citizen status, as well as of the relationship.
- b. A petition submitted by a mother on behalf of a child must be supported by the child's birth certificate showing the current name of the mother. If the mother's present name differs from that at the time of the child's

birth, the mother's marriage certificate and evidence of the legal termination of any prior marriage(s) must be submitted. If the change of name did not result from the marriage of the mother, other appropriate evidence of the name change must be submitted.

- c. If a petition is submitted by a father on behalf of a legitimate child or is filed by a stepparent, the following documents must accompany the petition:
 - (1) A certificate of marriage of the parents;
 - (2) Proof of the legal termination of any prior marriage(s) of the parent(s); and
 - (3) The birth certificate of the beneficiary.
- d. If a petition is submitted by the father of a legitimated child, the petitioner must submit:
 - (1) Evidence of the child's legitimation, which must have taken place before the child reached the age of 18;
 - (2) Proof of legal termination of any prior marriage(s) if the legitimation was the result of the marriage of the natural parents to each other; and
 - (3) The birth certificate of the child.
- e. If a petition is submitted by the alleged natural father of a child, born out-of-wedlock, the petitioner must establish that:
 - (1) He is the natural father of the offspring; and
 - (2) A bona fide parent-child relationship exists or has existed while the child was under the age of 21.

(Such a relationship exists or has existed when the father evinces or has evinced an active concern for the child's support, instruction, and welfare. Documents to manifest this concern may include (but are not limited to) the child's birth certificate, local civil records, affidavits from knowledgeable persons, and evidence of financial support. DHS may require blood tests from the petitioner, beneficiary, and the beneficiary's mother.)

9 FAM Appendix N, 201.7 Petition on Behalf of a Parent

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- a. A petition submitted on behalf of a mother must be accompanied by a copy of the petitioner's birth certificate which shows the current name of the mother. If the mother's name differs from that on the petitioner's

birth certificate, evidence showing the name of the mother at the time of the child's birth (for example, a marriage certificate of the mother having the name shown on the petitioner's birth certificate) must be submitted.

- b. If a petition is submitted on behalf of a father of a legitimate child or on behalf of a stepparent, the petitioner's birth certificate, the marriage certificate of the parents, and proof of the legal termination of any prior marriage(s) of either parent must accompany the petition.
- c. If a petition is submitted on behalf of a father of a legitimated child, the petitioner's birth certificate, evidence that legitimation took place before the petitioner reached age 18, and, if legitimation occurred through marriage of the natural parents to each other, evidence of the legal termination of any prior marriage(s) of either parent must accompany the petition.
- d. If a petitioner born out-of-wedlock submits a petition on behalf of his or her father, evidence to show that the beneficiary is the natural father of the petitioner and that a parent-child relationship exists or has existed must accompany the petition. (See 9 FAM Appendix N, 201.5.)

9 FAM Appendix N, 201.8 Petition on Behalf of an Orphan

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- a. You are authorized to approve orphan petitions when the DHS district director at a stateside office has made a favorable determination concerning an advance processing application. This will be reflected by receipt of the approved Form I-600-A, Application for Advance Processing of Orphan Petition or telegraphic or faxed notification of its approval. The occasion will arise when the prospective petitioner (or married petitioner and spouse) has traveled abroad to:
 - (1) Adopt a known child (after both the petitioner and spouse, if any, have personally seen and observed the child);
 - (2) Facilitate the adoption in the United States of a known child; or
 - (3) Locate and adopt a child.
- b. Your adjudication of the petition must include all aspects of eligibility for classification as an orphan under INA 101(b)(1)(F) (8 U.S.C. 1101(b)(1)(F)), other than the ability of the prospective parent(s) to furnish proper care for the beneficiary orphan. (See 9 FAM 42.21 N13.4 .) You must forward for adjudication by the USCIS office having jurisdiction over the child's area of residence any petition which is not clearly approvable. (See 9 FAM Appendix N, 201 c.)

9 FAM Appendix N, 201.9 Evidence of Legal Termination of a Marriage

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Primary evidence to establish legal termination of a marriage consists of the divorce decree, the annulment document, or the death certificate of a prior spouse.

9 FAM Appendix N, 201.10 Married Woman as Petitioner or Beneficiary

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If the petitioner or the beneficiary is a married woman, her marriage certificate must usually be submitted with the petition. However, when the petitioner and beneficiary are mother and child, regardless of the child's age, the mother's marriage certificate need not be submitted if the mother's present name appears on the child's birth certificate.

9 FAM APPENDIX N, 202 CONSULAR OFFICER ACTION SHOWN ON PETITION FORM

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- a. You must indicate approval of a visa petition by completing the appropriate spaces in the block captioned "FOR USCIS OFFICE ONLY." Complete the following spaces:
 - (1) Petition filing date;
 - (2) Box checked "personal interview;"
 - (3) Section of the law under which the petition was approved;
 - (4) In "Action Stamp" box, add the following information:

For Form I-130, note that evidence is scanned into the Immigrant Visa Overcome (IVO) case and attached to the petition that USCIS has cleared the petitioner under the Adam Walsh Act (See 9 FAM Appendix N, 203);
 - (5) Signature of the approving consular officer;
 - (6) Title and location of the consular officer; and
 - (7) Date of approval.
- b. The post must charge the prescribed fee for filing Form I-130, Form I-360, or Form I-600. When the fee is collected, a notation of "\$XX fee received" must be entered in the fee stamp box. (See 9 FAM Appendix N,

Exhibit III.)

9 FAM APPENDIX N, 203 ADAM WALSH CHECK OF THE PETITIONER

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- a. Section 402 of the Adam Walsh Child Protection and Safety Act ("Adam Walsh Act"), Public Law No. 109-248, amended section 204 of the Immigration and Nationality Act to provide that an individual who has been convicted of a specified sexual or kidnapping criminal offense against a minor may not file a petition for a family-sponsored immigrant visa without a determination by the Secretary of Homeland Security, in his sole and unreviewable discretion, that the petitioner poses no risk to the beneficiary. The Adam Walsh Act was made effective on July 27, 2006.
- b. You do not have access to petitioners' criminal history records, which must be reviewed to establish eligibility under the Adam Walsh Act before a family-based petition for immigrant status (Form I-130) can be approved. Although you may accept a petition in certain circumstances, you may not approve a petition until USCIS has conducted the required check and confirmed that the petitioner is eligible to file the Form I-130 under INA 204(a)(1)(A)(viii) (8 U.S.C. 1154(a)(1)(A)(viii)) or 204(a)(1)(B)(i). Any petition that had been approved by a consular officer on or after July 27, 2006 without USCIS confirmation of such eligibility to file is not valid unless and until USCIS performs an Adam Walsh Act check and notifies post of the petitioner's eligibility.
- c. When you accept a petition overseas you should first adjudicate the relationship and then send the petitioner biodata to the National Visa Center ("NVC") following the procedural specifications in 9 FAM 42.41 PN5. NVC will transmit the request to USCIS and will communicate the USCIS response to post. If the USCIS Adam Walsh Act check reveals any question regarding the petitioner's eligibility under INA 204(a)(1)(A)(viii) or 204(a)(1)(B)(i), post will be instructed to forward the petition to the appropriate USCIS office overseas as "not clearly approvable."

9 FAM APPENDIX N, 204 REFERRAL TO U.S. CITIZENSHIP & IMMIGRATION SERVICES (USCIS)

(CT:VISA-892; 06-06-2007)

You must refer the petition and supporting documents to the USCIS Officer-

in-Charge at the USCIS office with jurisdiction over the post for adjudication (See 9 FAM Appendix N, Exhibit I) if the:

- (1) Primary evidence submitted does not satisfy you that the petitioner is a U.S. citizen or that the relationship to the beneficiary claimed in the petition exists, or
- (2) Petitioner cannot present primary evidence relating to such matters, or
- (3) USCIS has so instructed post because the Adam Walsh Act check raises questions which need further review.

9 FAM APPENDIX N, 205 FEE COLLECTION

(CT:VISA-892; 06-06-2007)

Fee payments must be made at the time the petition is filed with the consular officer and are collected in accordance with standard procedures in 7 FAH-1 H-700. When collecting such fees, the consular officer annotates the petition with the amount of the fee collected and the date. The fees may be collected by the consular cashier for the petitions taken by the USCIS office at the same post, if that office does not otherwise have the facility to collect fees. Fees may also be collected by constituent posts that have a USCIS office in that country that will accept petitions by mail. However, the responsibility is the petitioner's to forward the petition, fee receipt, and documents to USCIS. While you may take the fee, you should not review the petition or documents. Post should not collect fees for petitions that will be sent to domestic offices for adjudication.